

STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Section 122  
Title 14, California Code of Regulations  
Re: Transferability of Commercial Spiny Lobster Fishing Permits

- I. Date of Initial Statement of Reasons: January 7, 2005  
Date of Amended Initial Statement of Reasons: February 9, 2005
- II. Date of Pre-adoption Statement of Reasons: March 22, 2005
- III. Date of Final Statement of Reasons: May 16, 2005
- IV. Dates and Locations of Scheduled Hearings:
  - (a) Notice Hearing: Date: August 5, 2004  
Location: Bridgeport
  - (b) Discussion Hearing: Date: February 4, 2005  
Location: San Diego
  - (c) Adoption Hearing: Date: May 5, 2005  
Location: Sacramento
- V. Update:

No modifications were made to the originally proposed language of the Amended Initial Statement of Reasons.

The Commission adopted “option A” for the transferable permit qualification criteria. The Commission also adopted the sub-option within “option A” of having landed 2,000 pounds or more in at least 2 of the 5 years in the qualifying window. The Commission adopted an initial limit of 10 permits per year that may be transferred, only until March 31, 2008, at which time there would be no limit. The Commission chose not to adopt trap limits on permits that are obtained via the transfer process and instead directed the Department to address the matter of identifying lobster traps and trap buoys in such a way that trap limits could be enforced and to prepare a regulatory proposal for trap limits at that time. All other amendments were adopted as originally proposed.

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

Ten comments were responded to in the Pre-adoption Statement of Reasons. Those responses have been updated to reflect the Commission's action and are attached as Appendix A. Comments received in the balance of the comment period are responded to in Appendix B.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:  
California Fish and Game Commission  
1416 Ninth Street  
Sacramento, California 95814

VIII. Location of Department Files:

Department of Fish and Game  
1416 Ninth Street  
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

Reestablish the previous method of issuing new permits, a drawing based on participation requirements and attrition of prior permit holders. This alternative was rejected because it allowed only one new permit for each 10 non-renewed permits and allowed only those persons who had a lobster crewmember permit in the preceding two years to enter the drawing. This alternative was repealed by the Commission in anticipation of these regulations.

(b) No Change Alternative:

The no change alternative would keep the existing regulations in place. There would be no means for anyone to enter the spiny lobster fishery as a new permit holder. There would be no means for existing spiny lobster fishermen to sell their permits along with any boat, traps or other equipment used in harvesting spiny lobster.

- (c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. By allowing the free-market transfer of spiny lobster fishing permits the proposed action may provide a positive economic impact through the sale of a complete business package, i.e., a lobster fishing boat, traps and permit. This fishery is primarily conducted in southern California, south of Point Conception, Santa Barbara County, so there is no California spiny lobster fishing businesses in other states.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

The proposed action will not have an immediate impact on the creation or elimination of jobs or businesses in the state. The permits that are designated as transferable will provide for the orderly sale of a complete business package for the harvest of California spiny lobster. The persons whose permits are designated as non-transferable will be able to continue fishing for California spiny lobster for as long as they chose to do so.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (f) Programs Mandated on Local Agencies or School Districts:

None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.

- (h) Effect on Housing Costs:

None.

## Updated Informative Digest/Policy Statement Overview

State law (Sections 8254 and 8259, Fish and Game Code) authorizes the Commission to set the conditions for issuance of and to limit the number of commercial lobster permits.

Existing regulations (Section 122, Title 14, California Code of Regulations) set the conditions for issuance and renewal of commercial lobster fishing permits.

Under these regulations all lobster operator permits are non-transferable.

The proposed amendments would create a transferable lobster operator permit and set qualification criteria based on prior participation. The Commission will consider a range of landings from either Option A or Option B, below to have an existing 2005-06 non-transferable permit designated a transferable permit.

Option A: A fisherman would have to have landed a minimum of 500 pounds per year in 4 of 5 years during the window period extending from the 1996-97 through the 2000-01 season or have landed a minimum 2,000 pounds per year in [1 or 2] of the same 5 year window period (1996-97 through 2000-01). All such landings would have to have been reported to the Department pursuant to sections 8043 and 8046, Fish and Game Code.

Option B: A fisherman would have to have landed a total of [500 to 80,000] pounds within the time period commencing with the [1996-97 – 2000-01] season and ending with the [2000-01 – 2003-04] season. All such landings would have to have been reported to the Department pursuant to sections 8043 and 8046, Fish and Game Code.

All 2005-06 permits not meeting the qualification criteria would remain non-transferable.

The Department would be charged with making an initial determination as to who meets the qualification criteria and notifying all lobster operator permit holders as to that determination. Any lobster operator permit holders not meeting the qualification criteria based on Department records could submit copies of their own records to show they do meet them. Such copies would have to be submitted on or before March 31, 2006.

Existing regulation sets the deadlines for submission of lobster operator permit renewal applications as May 31 (normal, no penalty fee), June 1-30 (late renewal, \$50 late penalty) and after June 30 (no renewal, permit application returned).

The proposed action would advance those deadlines by one month in each instance, to April 30 (normal), May 1-31 (late) and after May 31 (no renewal) and clarify that any permit not renewed will be considered forfeited to the Department. In addition, the

proposed regulations state that the late penalty is determined pursuant to Section 7852.2 of the Fish and Game Code, instead of listing the actual dollar amount.

There are no regulations regarding the transfer of lobster operator permits. The proposed action would set the conditions under which transferable lobster operator permits could be transferred to new fishermen. To transfer a permit the permit holder or his/her estate would have to submit a notarized letter identifying the transferee, the original transferable lobster operator permit, a copy of the transferee's current California commercial fishing license, and a non-refundable \$500 permit transfer fee to the Department's License and Revenue Branch in Sacramento. The new permit would be valid for the remainder, if any, of the then current lobster season and could be renewed as provided.

The Commission will consider if there should be a limit of from 2 to 25 permit transfers per year until March 31, 2008, after which date any number of permits could be transferred, or if there should be no limit on transfers at all. Permit transfer requests would be processed in the order received. If on any given day the number of applications received exceeded the available number of transfers the Department would conduct a drawing to determine which application(s) shall be accepted. This limit would not apply in the case of the death of the permittee. The estate of a deceased permit holder would be able to renew the permit if needed to keep it valid, and would have one year from the date of death of the permit holder, as listed on the death certificate, to transfer the permit.

The Commission will now also consider if there should be a limit of 400 traps applied to all new lobster operator permits issued via the permit transfer process being proposed in this regulatory package. If approved, when any transferable lobster operator permit is transferred to a new person that permit would be marked by the Department as being valid for not more than 400 traps.

Existing regulations require fishermen to complete and submit an accurate record of fishing activity on the "Daily Lobster Log, DFG 122 (6/95)", provided by the Department. That form was updated in July 1996 to provide for recording up to three days' fishing activity on one page. No changes were made in the information required on the log. The proposed changes will update the log book reference to "Daily Lobster Log, DFG 122 (7/96)," and make the non-substantive change to incorporate the log by reference rather than print a copy in Title 14.

Any person denied the reclassification of his/her 2005-06 lobster operator permit by the Department would be able to appeal that denial to the Commission within 60 days.

Several non-substantive changes in punctuation and grammar have been made for clarity throughout the regulatory text.

**On the matter of transferable permits, the Commission adopted Option A, which includes two ways to qualify for a transferable permit. The Commission adopted either a minimum of 500 pounds of lobster per year in 4 of the 5 permit years from 1996-97 through 2000-01 or a minimum of 2,000 pounds per year in 2 of the 5 years from 1996-97 through 2000-01.**

**On the matter of an initial limit on the number of permits that may be annually transferred, the Commission established an initial limit of 10 permit transfers per year until March 31, 2008.**

**On the matter of trap limits for permits obtained by means of a transfer, the Commission chose not to establish a trap limit in the lobster fishery at this time.**

**On all other matters the Commission adopted the regulations as proposed.**

Section 122, Title 14, CCR is amended to read:

§122. Lobsters, Permits to Take.

(a) Classes of Lobster Permits.

(1) There is a transferable lobster operator permit, a non-transferable lobster operator permit and a lobster crewmember permit.

(2) Under operator permits issued by the department, licensed commercial fishermen may use traps to take spiny lobsters for commercial purposes in Districts 18, 19, 20A, and that part of District 20 southerly of Santa Catalina Island between Southeast Rock and China Point. No other method of take is authorized for the commercial harvest of spiny lobsters.

(3) Any licensed commercial fisherman not eligible to obtain a lobster operator permit pursuant to this section may purchase a lobster crewmember permit, authorizing him/her to accompany the holder of a lobster operator permit and to assist that person in the commercial take of spiny lobster.

(b) Each lobster permit shall be issued annually and shall be valid for the period of the commercial lobster season. Each operator and crewmember permittee shall have his/her permit in possession when taking lobsters.

(c) Except as provided in this section, ~~A~~ a permit shall not be assigned or transferred, and any right or privilege granted thereunder is subject to revocation, without notice, by the Fish and Game Commission, at any time.

(d) Applicants for the renewal of lobster operator permits shall have held a valid, ~~unrevoked lobster operator permit, that has not been suspended or revoked,~~ in the immediately preceding permit year.

(e) ~~Number of Permits:~~ Transferable Lobster Operator Permit Qualification Criteria and Procedures:

(1) To qualify for a transferable lobster operator permit, an individual shall hold a valid 2005-06 lobster operator permit that has not been suspended or revoked and have landed a minimum of 500 pounds of lobster per year during any 4 of the 5 permit years from 1996-97 through 2000-01, inclusive, or have landed a minimum of 2,000 pounds of lobster per year during any 2 of those 5 permit years as documented by fish landing receipts submitted to the department in his/her name and commercial fishing license identification number pursuant to Section 8046, Fish and Game Code.

(2) Beginning on July 1, 2005 or 30 calendar days after the effective date of these regulations, whichever date is later, the department shall make an initial determination, based on department records, of which holders of valid 2005-06 lobster operator permits, that have not been suspended or revoked, meet the qualifications for a transferable lobster operator permit specified in subsection (e)(1) above and shall mail notice of such determination, to the last address on record with the department, to all 2005-06 lobster operator permit holders. Each person who meets the qualifications will have his/her permit designated by the department as a transferable lobster operator permit.

(3) The holder of a 2005-06 lobster operator permit who is notified by the department that he/she does not meet the qualifications for a transferable lobster operator permit may submit to the department's License and Revenue Branch, 3211 "S" Street,



Sacramento, CA 95816, copies of fish landing receipts that have been issued in his/her name and commercial fishing license identification number pursuant to sections 8043 and 8046, Fish and Game Code, that demonstrate he/she does meet the qualifications in subsection (e)(1) above. Such fish landing receipts and a letter requesting that his/her permit be designated as a transferable lobster operator permit shall be submitted to the department on or before March 31, 2006. Any request postmarked or presented after March 31, 2006 will not be considered.

(4) The holder of a 2005-06 lobster operator permit not able to meet these qualification criteria or meeting them and failing to submit his/her fish landing receipts on or before March 31, 2006, pursuant to subsection (e)(3) above shall have his/her permit designated a non-transferable lobster operator permit, effective with the 2006-07 license year.

(5) The holder of a valid, ~~unrevoked~~ lobster operator permit that has not been suspended or revoked, from the immediately preceding permit year shall be eligible to purchase a lobster operator permit of the same classification regardless of the number issued.

(f) Procedures and Deadline for Permit Renewal and Forfeiture of Non-renewed Permits.

Applications for renewal of transferable and non-transferable lobster operator permits must be received by the department or if mailed, postmarked not later than ~~May 31~~ April 30 of each year. Applications presented or postmarked after ~~May 31~~ and before July 1 April 30 and before June 1 will be assessed a ~~\$50 late fee~~ late penalty pursuant to Section 7852.2 of the Fish and Game Code. Applications postmarked or presented after ~~June 30~~ May 31 will not be considered. The holder of a transferable or non-transferable lobster operator permit who fails to renew his/her permit on or before May 31 will be considered to have forfeited that permit to the department and shall thereafter be able to commercially fish for lobster only under the authority of a lobster crewmember permit or by obtaining a transferable lobster operator permit pursuant to these regulations.

(g) Procedures, Timelines and Initial Limit on Permit Transfers.

(1) The holder of a valid transferable lobster operator permit that has not been suspended or revoked may transfer his/her permit to another person licensed as a California commercial fisherman. The application to transfer a permit shall be in the form of a notarized letter from the existing permit holder identifying the transferee and shall include the original transferable lobster operator permit, a copy of the transferee's commercial fishing license and a nonrefundable permit transfer fee of five hundred dollars (\$500). The application shall be submitted to the department's License and Revenue Branch, 3211 "S" Street, Sacramento, CA 95816. The transferable lobster operator permit shall be valid for the remainder, if any, of the then current lobster season and may be renewed in subsequent years pursuant to these regulations. If the transferee holds a non-transferable lobster operator permit, that permit shall be cancelled.

(2) Not more than 10 applications to transfer a permit shall be processed by the department during each license year (April 1 – March 31) until March 31, 2008, after

which date there is no limit on the number of transfers that may be processed during a license year. Applications will be processed in the order received. If on any given day the number of applications received is greater than the available number of transfers, the department shall conduct a drawing to determine which application(s) shall be processed. This subsection shall not apply in the event of the death of the permit holder. The estate of the holder of a transferable lobster operator permit may renew that permit as provided for in these regulations if needed to keep it valid. The estate of the decedent may transfer that permit pursuant to subsection (g)(1) above not later than one year from the date of death of the permit holder as listed on the death certificate.

~~(g)~~ (h) No SCUBA equipment or other artificial breathing device may be used to take lobster on any boat being operated pursuant to a commercial lobster permit.

~~(h)~~ (i) All provisions of the Fish and Game Code and regulations of the Fish and Game Commission relating to lobsters shall be a condition of all permits to be fully performed by the holders thereof, their agents, servants, employees, or those acting under their direction or control.

~~(i)~~ (j) Exemption from Tidal Invertebrate Permit. A lobster operator or crewmember operating under the provisions of a lobster permit is not required to possess a Tidal Invertebrate Permit, but is subject to the provisions of Section 123.

~~(j)~~ (k) No lobster trap used under authority of this permit shall be pulled or raised or placed in the water between one hour after sunset to one hour before sunrise.

~~(k)~~ (l) All lobster traps and receivers impounding lobsters shall be individually buoyed. The buoys must be on the surface of the water, except after the first Tuesday in October when buoys may be submerged by means of metallic timing devices, commonly called "pop-ups."

~~(l)~~ (m) Each buoy identifying a lobster trap shall display the commercial fishing license identification number of the lobster operator permit holder followed by the letter P. The commercial fishing license number and the letter P shall be in a color which contrasts with that of the buoy and shall be at least one (1) inch in height and at least one-eighth (1/8) inch in width.

~~(m)~~ (n) Any person pulling or raising lobster traps and receivers bearing a commercial fishing license number other than his/her own must have in his/her possession from the party who holds the permit assigned to said gear written permission to pull the traps, or receivers.

~~(n)~~ (o) The employees of the department may disturb or move any lobster trap at any time while such employees are engaged in the performance of their official duties and shall inspect any lobster trap to determine whether it is in compliance with all provisions of the Fish and Game Code and regulations of the commission.

~~(o)~~ (p) During the closed season for the taking of spiny lobster, no buoy attached to any trap may be marked in such manner as to identify the trap as a lobster trap, except that legally marked lobster traps may be placed in the water not more than six (6) days before the opening of the season and may remain in the water for not more than six (6) days after the close of the season, if the door or doors to such traps are wired open, the trap is unbaited, the buoy remains at the surface of the ocean, and no attempt is made to take spiny lobsters.

~~(p)~~(q) Restricted fishing areas.

(1) No lobster trap used under the authority of this permit shall be used within 750 feet of any publicly-owned pier, wharf, jetty or breakwater; however, such traps may be used to within 75 feet of any privately-owned pier, wharf, jetty or breakwater.

(2) No lobster traps shall be set or operated within 250 feet of the following specified navigation channels.

(A) Newport Bay: Starting at the demarcation line at the entrance to Newport Bay and extension of the west side channel line, proceed southeasterly on a bearing of 151° magnetic one nautical mile; then northeasterly 44° magnetic 500 feet; then northwesterly 331° magnetic one nautical mile to the demarcation line and an extension of the east side channel line.

(B) Dana Point Harbor: Starting from Dana Point east jetty light "6," proceed on a bearing of 120° magnetic 450 yards to red buoy "4"; then south 180° magnetic one nautical mile; then westerly 270°, 300 yards; then north 0° magnetic approximately one nautical mile to Dana Point Harbor light "5."

(C) Oceanside Harbor: Starting from Oceanside Harbor breakwater light "1," proceed on a bearing of 225° magnetic for one nautical mile; then southeast for 450 yards on a bearing of 110° magnetic; then northeast on a bearing of 35° magnetic for one nautical mile to Oceanside Harbor south jetty light "2"; then west-southwest on a bearing of 253° to the point of beginning at Oceanside Harbor breakwater light "1."

~~(q)~~(r) Records. Pursuant to section 190 of these regulations, any person who owns and/or operates any vessel used to take lobsters shall complete and submit an accurate record of his/her lobster fishing activities on a form (Daily Lobster Log, DFG 122 ~~(6/95)~~, see Appendix A) (7/96), incorporated herein by reference) provided by the ~~Department~~ department.

~~(r)~~(s) The person required to submit logs pursuant to these regulations shall have complied with said regulations during the immediate past license year, or during the last year such person held a permit, in order to be eligible for a successive year annual permit.

~~(s)~~(t) Any person denied a permit under these regulations may request a hearing before the commission to show cause why his/her permit request should not be denied. Such request must be received by the ~~Commission~~ commission within 60 days of the ~~Department's~~ department's denial. Any person denied the designation of his/her lobster operator permit as a transferable lobster operator permit pursuant to subsection(e) of these regulations may appeal the denial to the commission. Such appeal must be received by the commission within 60 days of the department's denial.

#### NOTE

Authority cited: Sections 8254 and 8259, Fish and Game Code. Reference: Sections 2365, 7852.2, 8043, 8046, 8250-8259, 9002-9006 and 9010, Fish and Game Code.